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No. 85-1091

In The

Supreme Court of the United States

October Term, 1985

ANDREW LEONI and HOUSTON SLATE,
Appellants,

vs.

THE STATE BAR OF CALIFORNIA,
Appellee.

On Appeal from the Supreme Court
of California

MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

1. Whether a State Rule that forbids false and misleading lawyer advertising and requires the inclusion in such advertising of statements that are intended to reduce or eliminate the likelihood that recipients of the advertising will be misled is constitutional.

2. Whether the application of such a Rule to lawyers who mass mail letters to a large numbers of specific persons purporting to give knowledgeable advice and counsel to such persons concerning their particular legal problems, when the lawyers do not have the specific information available to give such particular advice and when there are findings that some of the recipients were actually misled by the letters, violates such lawyers' constitutional rights.

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Appellee, The State Bar of California (hereinafter "State Bar"), respectfully moves the Court to dismiss the appeal herein, or in the alternative, to affirm the judgment of the Supreme Court of California on the ground that the opinion of the Supreme Court of California is correctly decided and is in accord with other decisions of this Court

pertaining to the constitutional right of lawyers to advertise and for this reason no important issue of Federal law is presented. That opinion is reported as Andrew Leoni and Houston Slate, Petitioners, v. The State Bar of California, Respondent, 39 Cal.3d 609 (1985). A copy of the opinion is included as Appendix A to Appellant's Jurisdictional Statement (hereinafter referred to as AJS).

I

STATEMENT OF THE CASE

Appellants seek review of a decision of the Supreme Court of California that they be publicly reprimanded for a mass mailing letter program they instituted for the purpose of soliciting clients.

The Supreme Court of California concluded that Appellants' conduct violated rule 2-101 of the Rules of Professional Conduct. Rule 2-101 provides in relevant part:

(A) A "communication" is a message concerning the availability for professional employment of a member or a member's firm. A "communication" made by or on behalf of a member shall not:

(1) Contain any untrue statement; or

(2) Contain any matter, or present or arrange any matter in a manner or format which is false, deceptive, or which tends to confuse, deceive or mislead the public; or

(3) Omit to state any fact necessary to make the statements made, in the light of the circumstances under which they are made, not misleading to the public; or

(4) Fail to indicate clearly, expressly or by context, that it is a "communication"; or

(5) State that a member is a certified specialist unless the member holds a current certificate as a specialist issued by the California Board of Legal Specialization pursuant to a plan for specialization approved by the Supreme Court; or

(6) Be transmitted in any manner which involves intrusion, coercion, duress, compulsion, intimidation,

threats or vexatious or harassing conduct.

(B) No solicitation or "communication" seeking professional employment from a potential client for pecuniary gain shall be delivered by a member or a member's agent in person or by telephone to the potential client, nor shall a solicitation or "communication" specifically directed to a particular potential client regarding that potential client's particular case or matter and seeking professional employment for pecuniary gain be delivered by any other means, unless the solicitation or "communication" is protected from abridgment by the Constitution of the United States or by the Constitution of the State of California. A potential client includes a former or present client.

Notwithstanding the foregoing, nothing in this subdivision (B) shall limit or negate the continuing professional duties of a member or a member's firm to former or present clients, or a member's right to respond to inquiries from potential clients.

The Rules of Professional Conduct are adopted by the State Bar of California and when approved by the Supreme Court are

binding upon all members of the State Bar. Upon wilful violation of the Rules of Professional Conduct, a member is subject to professional discipline. See California Business and Professions Code sections 6076 and 6077.*

The opinion of the Supreme Court of California held that Rule 2-101's content based regulation of misleading advertising was constitutional and further, that Petitioner's solicitation letters were misleading and that Rule 2-101 was constitutional as applied. The Court also held that because this is an evolving area of law no suspension should be imposed, but rather a public reprimand, for which the opinion would serve. Further the Court concluded that rather than prohibit the letter program the least restrictive

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* Unless otherwise stated, all statutory references are to the California Business and Professions Code. All references to Rules are to the Rules of Professional Conduct.

constitutional remedy would be to require Appellants to insert disclaimers or add clarifying language to the letters (AJS, page 2a).

Commencing in or about November 1978, Appellants instituted a "letter program" whereby direct mailings were transmitted to particular individuals, involving specific cases or matters in which those individuals were then involved. In engaging in their "letter program", petitioners were motivated, in part, by a desire to obtain fee-paying clients

Appellants directed their letters to either named defendants in small claims or municipal court civil actions, or to owners of real property which was in foreclosure. Appellants, their agents or employees obtained the names and addresses of certain of the recipients of their letters from records of public judicial proceedings on file in the Los Angeles municipal and small claims courts and they

obtained the names and addresses of other recipients from public newspapers which list property owners against whose homes notices of default had been filed with the Los Angeles County Recorder.

Beginning about November 1978 and continuing thereafter, Appellants caused their agents and employees to monitor the status of civil collection actions, unlawful detainer actions, personal injury actions and property damage actions filed in Los Angeles small claims and municipal court actions. As a result, Appellants would obtain the names and addresses of and send letters to named defendants against whom: (a) civil complaints for money had been filed; (b) unlawful detainer actions had been filed; (c) civil compliants for personal injury and property damage had been filed; (d) in collection actions in which requests to enter default had been filed, writs of execution had been issued, or writs of execution had

been served. In each of said letters, petitioners caused to be included an enclosure entitled "Money Problems."

A second enclosure, entitled "How to Pay Debts Under Court Protection," was included with letters sent to individuals against whom had been filed civil complaints for money, requests to enter default, and against whom writs of execution had been issued or served. A third such enclosure, entitled "What is a Writ of Execution?" was included with those letters directed towards individuals against whom a writ of execution had been issued. A fourth such enclosure, entitled "If You are in Business--And You Are Facing a Writ of Execution," was included with those letters sent to business defendants against whom a writ of execution had been issued. A fifth such enclosure, entitled "Is Your Business Having Money Flow Problems?" was also sent to business defendants against whom a writ

of execution had been issued.

Each of said letters failed to identify the particular judicial proceeding involving the particular recipient of petitioner's letter either by reference to the actual case or file number or by reference to the specific judicial branch or district in which the matter was pending. Rather, Appellants' letters contain a temporary identification number used for the purpose of maintaining petitioners' office records of the letters sent.*

Some of the individuals to whom Appellants' letters were sent were, at the

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* The effect of the omission of any identification of the particular judicial proceeding in which the recipient was a party and the inclusion of Appellants' own identification number was that the recipient could not discern the case to which appellants' letter related. The recipient could even have concluded that an additional lawsuit had been filed against him or her. Additionally, a recipient had no way of knowing that the number contained in petitioners' letter was an internal identification number relevant only to petitioners' offices.

time, represented by counsel in the particular judicial proceedings which were the subject of petitioners' letters. Appellants acknowledged that (although a review of the court file pertaining to the particular proceeding would have, in some cases, made the fact of representation apparent) they made no effort to determine if any of the recipients were represented by other counsel at the time the letters were sent.

The Appellants and the State Bar stipulated to seven separate specific instances in connection with which the constitutionality of Appellants' letter program could be tested. They also agreed that there may be other instances involving similar facts, but that additional evidence regarding those facts would be cumulative.

A. The "Sitelines" Matter

In and prior to August 1980, a California service corporation called

Sitelines, Inc. was wholly owned by a Delaware corporation. Sitelines and its parent corporation had been represented by their attorney of record, Raymond A. Greenberg, Esq., in a civil action entitled Manarra v. Sitelines, Inc. et al. After trial in the matter, the parent corporation was exonerated of liability, but judgment was rendered against Sitelines, Inc. on October 30, 1979.

Greenberg concluded that Sitelines was judgment-proof, and his clients relied upon his advice not to pay the outstanding judgment.

In August 1980 Appellants caused a letter with attachments to be sent to Sitelines, Inc. The letter and attachments referred to Chapter 13 bankruptcy procedures, which is not a remedy available to corporations.

After receiving Appellants' letter, the officers of the parent corporation concluded that their assets could be

attached. Contrary to their own attorney's advice, they decided to pay the judgment.

The Hearing Panel and Review Department found that because Sitelines' guardian's assets could not be attached andbecause of the reference to Chapter 13 Bankruptcy, Appellants' letter contained materials which was false, deceptive or which tended to confuse, deceive or mislead in violation of Rule 2-101(A)(2).

B. The "Roman" Matter

In about April 1980, Lawrence L. Roman was provided with a copy of a letter Appellants caused to be sent to his client, Anna Russo. The letter included an enclosure entitled "Order for Debt Relief." Roman believed the letter implied that: (a) service would be provided by Appellant for the total amount of $60; and (2) the proposed "plan" referred to something other than bankruptcy. Roman called Appellants' office, and was told by

an attorney that the proposed "plans" could be akin to bankruptcy, depending on whether one filed under Chapter 11 or Chapter 13. The attorney also told Roman that, in addition to the $60 filing fee, attorneys' fees in the amount of $600 would be charged.

The Hearing Panel and Review Department concluded that the letter and enclosures contained matter which was false, deceptive, or which tended to confuse, deceive or mislead because the service would not be provided for $60 and because the word "bankruptcy" was not disclosed by Appellants.

C. The "Wagstaff" Matter

In 1979, William A. Wagstaff was a defendant in a Los Angeles Municipal Court action. His attorney of record was James V. Jordan, Esq. At a time when the plaintiff in that action had filed a motion for summary judgment and Jordan had opposed said motion on Wagstaff's behalf,

but prior to the hearing on the motion, Appellants sent a letter to Wagstaff. Plaintiff's motion for summary judgment was denied.

The Hearing Panel and Review Department concluded Appellants' letter and attachments contained matter which was false and deceptive or which tended to confuse, deceive or mislead in violation of Rule 2-101(A)(2), in that contrary to the true facts, the letter falsely suggests that the natural result of the civil action would be a judgment adverse to Mr. Wagstaff and execution upon his assets.

D. The "Parayno" Matter

In April 1978, Fidela G. Parayno was served with Summons and Complaint for Specific Performance. Thereafter, Parayno retained counsel, Charles J. Tarr, who filed an answer on her behalf. On or about February 21, 1979, while the court file in Parayno's case indicated that the matter was at issue,

Appellants sent a letter with enclosures to Parayno.

Upon receipt of petitioners' letter, Parayno became extremely upset and concerned. The letter caused her to question whether Tarr was adequately representing her interests. She felt that she was in imminent danger of losing her property.

The Hearing Panel and Review Department concluded that Appellants' letter to Parayno contained matter which was false or deceptive or which tended to confuse, deceive or mislead, in that the natural course of said civil action did not conform to petitioners' implication that judgment would be rendered against Parayno and her assets would be executed upon.

E. The "Main" Matter

In about 1979, judgment was rendered against Jerral W. Main in a civil action filed in Los Angeles Superior Court. Between the date of entry of

judgment and July 1980, Main voluntarily paid the sum of $42,000 to the plaintiff pursuant to a stipulated payment schedule. In about July 1980, Main received a letter with attachments from Appellants. Main became extremely upset upon his receipt of the letter. He contacted the plaintiff's office and was told that they had not executed on his property pursuant to a writ of execution, nor did they intend to. Main telephoned Appellants' office and was told by a female employee that although she did not know the specifics of his case, the statements contained in Appellants' letter were true. In fact, the plaintiff did not attempt to execute on Main's property, nor was any of Main's property attached. Main ultimately voluntarily completed satisfaction of the outstanding judgment.

The Hearing Panel and Review Department concluded Appellants' letter with attachments contained matter which was

false or deceptive or which tended to confuse, deceive or mislead, in violation of Rule 2-101(A)(2). The Hearing Panel and Review Department also concluded Appellants' letter with attachments was transmitted to Main in a manner which involved intrusion or threats, in violation of Rule 2-101(A)(6).

E. The "Sims" Matter

In late 1978, Valerie Keen Sims rented an automobile at her employer's request; the latter subsequently refused to pay for the rental charges. Sims was sued by the rental company in a Los Angeles Municipal Court action. She allowed judgment in the amount of $420 to be entered against her on February 13, 1979, intending to seek subrogation from her employer. Sims did sue her employer on February 10, 1979, and thereafter accepted the sum of $1000 in settlement of her claim.

On or about March 15, 1979, Sims received a letter with attachments from Appellants. The letter was sent to Sims' place of employment, and consistent with office procedures, her employer opened and read the letter. Sims' employer became very upset over the possibility that Sims' wages could be garnished, was concerned that Sims had financial problems which could affect her trustworthiness, and instructed Sims to take care of the matter.

Sims immediately telephoned Appellants' office. Sims informed a woman who identified herself as a secretary in Appellants' office that the letter was inaccurate, that Appellants should not contact her in the future, and that she considered Appellants' letter to be an invasion of her privacy.

A few weeks later, Appellants sent a second letter to Sims at her residence. Sims' husband saw the letter and became

extremely angry. He interpreted the letter to mean that the civil action against his wife had not been settled, that Appellants were bringing to Sims' attention additional problems which had developed in the action, and that his wife was lying to him. He left the family residence for three days.

The Hearing Panel and Review Department concluded Appellants' letters to Sims contained matter which tended to confuse, deceive or mislead in violation of Rule 2-101(A)(2). Further, Appellants' letters were transmitted in a manner which involved intrusion, coercion, duress, compulsion, intimidation, threats or vexatious or harassing conduct, in violation of Rule 2-101(A)(6).

G. The "Daisy" Matter

In or about March 1978, Daisy of California ("Daisy"), a California corporation, was sued in the Los Angeles

Municipal Court. On or about May 24, 1978, an Answer to the Complaint was filed by Daisy.

Trial was scheduled in said matter for November 17, 1978. By Stipulation of the parties on November 17, 1978 the matter was taken off the calendar and re-scheduled for trial on January 29, 1979.

On or about November 28, 1978, the parties entered in the court file a stipulation taking off calendar plaintiff's Motion to Strike and Motion for Default. By November 28, 1978, the parties had agreed not to seek a default judgment against Daisy, and the parties had entered into serious settlement negotiations.

Thereafter, Appellants' letter dated November 29, 1978 was received at Daisy's office.

The president of Daisy read the letter and interpreted it to mean that the plaintiff was obtaining a default judgment

against Daisy, and that something of which he was not aware had occurred in the action. In fact, the true status of the action was not as represented in petitioners' letter.

The Hearing Panel and Review Department concluded Appellants' letter to Daisy contained matter which was false or deceptive or which tended to confuse, deceive or mislead in violation of Rule 2-101(A)(2).

The California Supreme Court after its independent review of the record held that each of the letters violated Rule 2-101(A)(2) in that each of the letters had a likelihood of misleading the public and actually did mislead the public.

The California Court also concluded that Rule 2-101(A)(3) was violated because the letters omitted facts necessary to make the letters not misleading (i.e. the letter stated that $60 is needed to apply for debt relief but fail to state that

Appellants will charge 10 times that amount in attorneys' fees. (See AJS, p. 20A and 21A.)

Further, the Court upheld the findings in the Main and Sims matters that the format in which Petitioners presented their letters involved intrusion, threats and intimidation in violation of Rule 2-101(A)(6). Although recognizing that the transmission of commercial speech by mail is entitled to constitutional protection, the Court concluded that particularized, misleading and unsolicited letters mailed to defendants against whom cases were then pending was bound to cause panic and fear in lay recipients (AJS, page 21a).

Finally, the Court concluded the letters violated Rule 2-101(A)(4) because they failed to clearly identify themselves as a communication concerning the availability of Appellants' law firm

for professional employment, thus omitting material facts.*

II

ARGUMENT

THE OPINION BELOW WAS DECIDED IN A WAY CONSISTENT WITH THE APPLICABLE DECISIONS OF THIS COURT AND PRESENTS NO IMPORTANT QUESTIONS OF FEDERAL LAW WHICH HAVE NOT BEEN SETTLED BY THIS COURT.

A. RULE 2-101(A) IS ON ITS FACE CONSTITUTIONALLY VALID.

Under the law of this land, misleading advertisements may be restrained. See Virginia State Board of Pharmacy v. Virginia Consumers Council 425 U.S. 748, 96 S.Ct. 1817 (1976); Bates

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* All Justices concurred in the conclusion that Rule 2-101(A)(2) (misleading statements) was violated. Bird, C.J., dissented from the conclusion that there was a violation of Rule 2-101 (A)(3) (failure to state attorneys fees would be charged; Bird and Kaus dissented as to the finding Rule 2-101(A)(4) (failure to identify the letters as a communication seeking professional employment) had been violated. Grodin, J. dissented only as to the conclusion that Rule 2-101(A)(6) (intrusive communications) was violated.

v. State State Bar of Arizona 433 U.S. 350, 97 S.Ct. 2671 (1977); In re Primus 436 U.S. 417, 98 S.Ct. 1893 (1978); In re RMJ 455 U.S. 191, 102 S.Ct 929 (1981); Zauderer v. Office of Disciplinary Counsel _____U.S.____ 105, S.Ct. 2265 (1985).

As to the validity of restricting misleading commercial speech, in fields other than the legal profession, see Friedman v. Rogers 440 U.S. 1, 99 S.Ct. 887 (1979); Central Hudson Gas v. Public Service Commission of New York 447 U.S. 557, 100 S.Ct 2343 (1980).

Clearly Rule 2-101(A) on its face is constitutional and Appellants apparently so concede (AJS, page 12). The restraints it places on lawyer advertising are, we submit, as limited as any rule now existing, or proposed, in the United States.

Rule 2-101(A) prohibits communications seeking professional employment

only if: (1) they contain untrue statements; (2) they contain matter or present matter in a format that is false or deceptive or which tends to confuse, deceive or mislead the public; (3) they omit any fact necessary to keep the statement from being misleading to the public; (4) they omit a statement that the communication is in fact a communication (i.e. failure to make clear that the communication is in fact an advertisement) if such fact is not clear from the context of the statement; (5) they hold the lawyer out as a certified specialist unless he is in fact so certified by the California Board of Legal Specialization; or (6) they are transmitted in a manner which involves intrusion, coercion, duress, compulsion, intimidation, threats or vexatious or harassing conduct.

B. AS APPLIED TO APPELLANTS' CONDUCT IN THIS MATTER RULE 2-101(A) WITHSTAND CONSTITUTIONAL CHALLENGE.

This Court has emphasized that attorneys who question the regulation of advertising are required to show that their particular advertisements are constitutionally protected speech.

In answer to the contention that an overbroad regulation of lawyer advertising might serve to chill protected speech,* the Court stated:

> "But the justification for the application of overbreadth analysis applies weakly, if at all, in the ordinary commercial context. As was acknowledged in Virginia Pharmacy Board vs. Virginia Consumer Council, 425 U.S. at 771 n.24, 96 S.Ct. at 1830, there are 'common sense differences' between commercial speech and other varieties. See also id. at 775-781, 96 S.Ct. at 1832-1835 (Concurring Opinion). Since advertising is linked to

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* Appellants also argue that Rule 2-101 is, in effect, overbroad and has a chilling effect on lawyer advertising. (AJS, p. 12)

> commercial well-being, it seems unlikely that such speech is particularly susceptible to being crushed by overbroad regulation. See id. at 771-772 n.24, 96 S.Ct. at 1830-1831. Moreover, concerns for uncertainty in determining the scope of protection are reduced; the advertiser seeks to disseminate information about a product or service that he provides, and presumably he can determine more readily than others whether his speech is truthful and protected. Ibid. Since overbreadth has been described by this court as 'strong medicine,' which 'has been employed . . . sparingly and only as a last resort,' (citation omitted) we decline to apply it to professional advertising, a context where it is not necessary to further its intended objective." (Emp. added.) (433 U.S. at 380-381, 97 S.Ct. at 2707-2708.)

Thus, in the context of commercial speech, the overbreadth doctrine is unavailable to attorneys challenging the validity of regulations on such speech. They must challenge the regulation as it applies to their conduct.

Appellants are, therefore, limited to challenging Rule 2-101 as it is applied to their own conduct.

Before discussing what that conduct was, it might be well to note what it was not!

It was not the publication of a general advertisement of legal services in magazines, newspapers, telephone books, pamphlets or on radio or television, nor the general availability of legal services along with representative fees that as was considered in Bates; it is not the publication of advertisements setting forth limited or specific areas of legal practice; nor the mailing of announcement cards to other than limited classes of person as was considered in In re RMJ; it is not the solicitation of persons with specific legal problems by a nonprofit charitable organization for the purpose of bringing litigation to establish constitutional rights as was considered in Primus; it is not the general publication in a newspaper of an advertisement addressed to persons with

certain legal problems as was considered in Zauderer.

What was done here was the mailing of hundreds of thousands of letters to specific individuals purporting to inform and advise each individual about his or her particular legal problem, which information and advice, because it was incorrect as to that individual, resulted in that person being misled.

The Supreme Court of California has found that petitioners' advertising letters directed to seven specific persons and purporting to be about their particular legal problems misled those persons who received them. The record fully supports these conclusions and the facts on which the conclusions are based were stipulated to by the parties.

In the Sitelines matter a parent corporation which had been exonerated of liability after trial and which after advice of its own counsel had determined

it had no liability for judgment against a subsidiary corporation received Appellants' letter referring to Chapter 13 Bankruptcy (which was not available in any even to either corporation) and concluded, contrary to its own counsel's prior advice, to pay the judgment. In the Roman matter, an attorney whose client had received one of Appellants' letters believed that whatever service Appellants would perform would only cost $60 and that Appellants' "plan" referred to something other than bankruptcy. When he called he learned the "plan" was indeed bankruptcy and the cost was $660. In the Wagstaff matter defendant Wagstaff was represented by counsel in a proceeding in which plaintiff filed a Motion for Summary Judgment. Appellants, before the Summary Judgment Motion was heard, mailed to Wagstaff a letter falsely suggesting that the natural result of the civil action would be a

judgment adverse to Wagstaff. The motion for Summary Judgment was denied. In the Parayno matter, Parayno was represented by counsel in an action for specific performance. She received Appellants' letter falsely suggesting that the natural course of the action would be a judgment against Parayno and execution against her property. She became extremely upset and thought her lawyer was not representing her interests properly. In the Main matter a $59,000 Judgment was entered against Main and Main had voluntarily paid $42,000. He received Appellants' letter saying that a writ of execution had been issued against him. Main became upset and called the creditor who informed him that they did not intend to execute on his property. Main called Appellants' office and was told Appellants' letter was correct but if he wanted more information he could come in for an appointment. Appellant

did not go in Appellants' office and in fact the creditor never did attempt to execute on Main's property. In the Sims matter a judgment was entered against Sims for $420. She obtained subrogation from a third party who had the ultimate liability. Thereafter her employer opened a letter to her from Appellant. The employer thought Sims did not pay her bills and instructed Sims to take care of the matter. Sims phone Appellant and informed them the statements in their letter was inaccurate, that she considered their letter an invasion of privacy and she wanted no more. Two weeks later, Appellants wrote a similar letter to Sims at her home. Sims' husband read it and was convinced his wife was lying to him about settlement of the underlying action. He left home for three days. In the Daisy matter Daisy Corporation was defendant in a civil action in which

serious settlement negotiations were underway when Appellants' letter arrived. Daisy's president read the letter and interpreted it to mean a default was being taken against Daisy (the letter stated ". . . [Plaintiffs] are asking the Court to declare you in default and order a judgment against you. The next step is to have the Court issue a writ of execution against you"). (See AJS, page 66a.) In fact, this was not the true status of the Daisy matter.

In substance, in their letters Appellants purported to know all about the recipients' particular factual situation and legal problem when in fact they knew nothing. This was misleading.

The parties acknowledged in the Stipulation that there may be other instances involving similar facts, however, the production of evidence relating to those facts would be cumulative.

So far as we are aware there are no decisions by this Court or any other court holding that misleading communications are protected by the First Amendment, and this is so whether the number of recipients who are misled as well as "confused or frightened" by such communications is large or "atypical".

The truth remains that some recipients of Appellants' particularized letters were misled and suffered harm. Moreover, petitioners should have been aware that their particularized mass mailing campaign would be incorrect as to many recipients and might mislead others.

Both as a protector of the consuming public and as an enforcer of ethical standards for lawyers, the Supreme Court of California has authority to prevent misleading advertising by lawyers. Nor does the validity of such restraints require that any rule containing them set

forth any and all factors that might mislead. Appellants and any reasonable person should be aware that many lay people, upon receiving a letter from a lawyer, will believe the particular statements in that letter purportedly addressed to the recipient's own legal problems, and will rely thereon sometimes to their detriment. Appellants sent the letters and only they can be responsible for the content. The letters were intended to cause some reaction in the recipients and they did. Appellants should not now be permitted to claim that the reaction was the over reaction of "panicky" people.

Lawyers who advertise by mail to particular individuals, purporting to advise them about their specific legal problems should have the responsibility of insuring that mail's accuracy. Such lawyers should also have the responsibility of making certain that all

facts necessary to prevent the letters from misleading that particular individual are contained in the letter, or the letter should not be sent.

We are not talking here about general advertisements, clearly labeled as such, that may be sent to a particular recipient. Most lay people would understand that the allegations in a general advertisement may or may not apply to them and can make their own decision about replying to the advertisement. In accord with this Court's other decisions in relation to attorney advertisements, "more information" not less should be the goal. That is the purpose of Rule 2-101(A) and it is the purpose of the requirement in the decision below that mass mail advertisements contain appropriate disclaimers or clarifying language. Is that too much to ask?

III

CONCLUSION

For the foregoing reasons, Appellee respectfully moves the Court to dismiss this Appeal, or in the alternative, to affirm the judgment entered in the case by the Supreme Court of California.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, a member of the bar of the Supreme Court of the United States, certifies that three copies of the MOTION TO DISMISS OR AFFIRM have been served on counsels of record for the parties herein by mailing same, first-class postage prepaid, this the 24th day of January 1986, as follows:

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January 24, 1986